

EVIDENCE -- Best evidence rule, in general Revised 9/2001

Rule 1002, Ariz. R. Evid., states:

To prove the content of a writing, recording, or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules or by applicable statute or rule.

"The best evidence rule applies only to situations in which a party seeks to prove the contents of a writing." *State v. Smith*, 122 Ariz. 58, 62, 593 P.2d 281, 285 (1979) [allowing admission of pictures of items rather than the items themselves]; *MH Investment Co. v. Transamerica Title Ins. Co.*, 162 Ariz. 569, 573, 785 P.2d 89, 93 (App. 1989). The rule **does not** impose any general requirement that "the highest degree of proof of which a question of fact is susceptible must be produced if such proof is accessible;" rather, the rule "is a principle relating only to writings, requiring the production of an original document or writing unless unavailable." *State v. Woolery*, 93 Ariz. 76, 86, 378 P.2d 751, 758 (1963), *disapproving State v. Price*, 76 Ariz. 358, 265 P.2d 444 (1954). In *Woolery*, the defendant shot his stepdaughter; she died on the operating table. After her death, an autopsy was performed on her body. At trial, the doctor who who operated on the victim testified that the victim died of the gunshot wound. On appeal, *Woolery* argued that the trial court erred by allowing the operating doctor to testify as to cause of death. He contended that the State should have presented either the autopsy report or the testimony of the doctor that did the autopsy. The Court disagreed, holding that the best evidence rule does not cover an expert giving his opinion about a specific issue. *Id.*

"By its terms, this rule applies only to the contents of a document, not to the documented event. . . . Thus an event may be proved by non-documentary evidence,

even though a written record of it was made." *W.F. Dunn, Sr. & Son v. Industrial Commission*, 160 Ariz. 343, 345, 773 P.2d 241, 243 (App. 1989) [worker's compensation claimant was not attempting to prove the content of the judgment of conviction, but rather the fact that he had been convicted of a crime, so Rule 1002 did not apply and he could prove the conviction simply by testifying to that effect].⁽¹⁾

1. Note that *Dunn* was a civil case, not a criminal case involving proof of a defendant's prior conviction beyond a reasonable doubt.